

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ATLANTIC RECORDING)	
CORPORATION, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Civil File Action No.
v.)	
)	1:17-cv-0431-AT
SPINRILLA, LLC, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**DEFENDANTS' MOTION FOR LEAVE FOR
COURT TO ACCEPT REPLY BRIEF OUT-OF-TIME**

Defendants' files this a Motion for Leave For the Court to Accept Reply Brief Out-of-Time and state as follow:

Defendants filed its First Motion for Summary Judgment on January 23, 2018. (Dkt. 173). Plaintiffs opposed that Motion on February 13, 2018. (Dkt. 177). Under Rule 6 of the Federal Rules of Civil Procedure and under Rule 7.1 of the Local Civil Rules, Defendants had fourteen days from the date of service of Plaintiffs' Opposition to file their Reply Brief, which was February 27. Defense counsel's staff mistakenly calendared the deadline as February 28, resulting in Spinrilla filing the Reply Brief one day late. (Dkt. 183).

Under Local Rule 7.1(F), it is within the Court's discretion to allow Defendants' one-day-late Reply Brief (Dkt. 183). Accepting filings that are just one

day late is fairly standard in this Court. (*See Craven v. United States*, 70 F. Supp. 2d 1323, 1327-28 (N.D. Ga. 1999) (considering an untimely responsive brief because there was no harm to opposing party and opposing party filed a reply); (*see also McLaughlin v. LaGrange*, 662 F.2d 1385 (11th Cir.1981) (noting that the district court considered plaintiffs' untimely response to defendants' motion and affirming the district court's order); (*Wiley v. Pless Sec., Inc.*, No. 1:05-CV-332-TWT, 2006 WL 8431781, at *5 (N.D. Ga. June 16, 2006), *report and recommendation adopted in part, rejected in part*, No. 1:05-cv-332-TWT, 2006 WL 1982886 (N.D. Ga. July 12, 2006) (holding: [t]he Court, however, will not use Plaintiff's one-day delay in filing her response to summary judgment as a basis for striking the response. Although Plaintiff is strongly discouraged from missing explicit court deadlines, the Court will exercise its discretion and consider the response because Defendant has shown no prejudice from the one day delay in filing. In fact, PSI has provided a reply to Plaintiff's response to summary judgment”)).

A one-day delay is not prejudicial. Plaintiffs have not listed a single harm or prejudice suffered as a result of Defendants' one-day lateness. In fact, Plaintiffs have demonstrated the lack of prejudice by their filing a Motion for Leave to File a Surreply. (Dkt. 188-1). In other words, Plaintiffs would likely file that Motion for Leave whether Defendants filed their Reply Brief on February 27 instead of on

February 28; thus, Defendants' minor and unintentional delay has not prejudiced Plaintiffs in any way.

Also, the efficiency of judicial administration has not been prejudiced by the one-day delay, particularly because on March 1, 2018, the Court entered an Order staying the deadline for Motions for Summary Judgment until the Court rules on Defendants' Motion for Sanctions. In other words, it does not appear that the Court is poised to rule on any motion for summary judgment yet, so one day has not caused any delay.

Lastly, Spinrilla respectfully submits that the Court should prefer ruling on the merits, rather than having Spinrilla's Motion decided on a technicality. (*Marcius v. RJM Acquisitions, LLC*, No. 114-cv-02967CAPGB, 2015 WL 12681657, at *2 (N.D. Ga. Oct. 23, 2015), *report and recommendation adopted*, No. 1:14-CV-2967-CAP, 2015 WL 12696104 (N.D.Ga. Nov. 13, 2015) ("[n]either the efficiency of judicial administration nor Defendant's opportunity to submit a Reply brief have been materially prejudiced by Plaintiff's delay, and the Court prefers to consider and rule on a fully briefed motion for summary judgment").

Therefore, Spinrilla respectfully requests that the Court accept its one-day late Reply Brief (Dkt. 183).

Respectfully submitted March 22, 2018.

LILENFELD PC

/s David M. Lilenfeld

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CERTIFICATE OF SERVICE

On March 22, 2018, Defendants filed the foregoing DEFENDANTS' MOTION FOR LEAVE FOR COURT TO ACCEPT REPLY BRIEF OUT-OF-TIME with the Clerk of Court using the CM/ECF system, which automatically and contemporaneously sends electronic notification and a service copy of such filing to all counsel of record:

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Dated: March 22, 2018.

/s David M. Lilienfeld
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